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THE REALIZATION OF ECONOMIC SOCIAL AND CULTURAL RIGHTS:

THE QUESTION OF TRANSNATIONAL CORPORATIONS

Report of the sessional working group on the working methods and activities of transnational corporations on its first session

Chairman-Rapporteur: Mr. El-Hadji Guissé

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Introduction

1. In accordance with its resolution 1998/8, the Sub-Commission on 3 August 1999 decided to establish, for a three-year period, a sessional working group to examine the activities of transnational corporations. The following experts were appointed as members of the working group: Mr. El-Hadji Guissé (Africa), Mr. Zhong Shukong (Asia), Mr. Asbjørn Eide (Western European and other States), Mr. Paulo Sérgio Pinheiro (Latin America) and Ms. Antoanella Iulia Motoc (Eastern Europe).

2. The working group held three public meetings, on 3, 6 and 10 August 1999.

3. A representative of the Office of the High Commissioner for Human Rights opened the first session of the working group.

4. The working group elected Mr. El-Hadji Guissé as Chairman-Rapporteur.

5. The following members of the Sub-Commission not members of the working group also took part in the discussions: Mr. Alberto Díaz Uribe, Mr. Joseph Oloka-Onyango, Mr. David Weissbrodt, Ms. Halima Embarek Warzazi and Mr. Louis Joinet.

6. The following non-governmental organizations in consultative status with the Economic and Social Council also participated in the meetings of the working group: American Association of Jurists, Centre Europe-Tiers Monde, Habitat International Coalition, Indian Movement "Tupaj Amaru", Indigenous World Association, International Confederation of Free Trade Unions, Movement against Racism and for Friendship among Peoples and Pax Romana.

7. The United Nations Non-Governmental Liaison Service also participated.

8. The following organizations were formally invited to participate: United Nations Conference on Trade and Development, United Nations Research Institute for Social Development, United Nations Development Programme and the International Labour Organization.

9. The working group decided to adopt the following agenda for the duration of its mandate:

1. Election of officers.

2. Adoption of the agenda.

3. Activities of transnational corporations:

(a) Identification and examination of the effects of the activities of transnational corporations on the enjoyment of civil, cultural, economic, political and social rights, including the right to development, the right to a healthy environment and the right to peace;

(b) Gathering and examination of information, including any working paper related to the effects of the activities of transnational corporations on the enjoyment of civil, cultural, economic, political and social rights, including the right to development, the right to a healthy environment and the right to peace;

(c) Preparation of a list, to be updated annually, of transnational corporations providing examples of their activities and indicating their positive and/or negative impacts on civil, cultural, economic, political and social rights, including the right to development, the right to a healthy environment and the right to peace, in countries in which they operate.

4. Present standards and standard-setting activities:

(a) Assessment of how the existing human rights standards apply to the activities of transnational corporations;

(b) Collection and analysis of the existing standards and standard-setting activities pertaining to the human rights aspects of the activities of transnational corporations, including those in other international bodies, NGO-based initiatives, business-based initiatives and private individuals' initiatives such as the MacBride Principles and the Sullivan Principles;

(c) Collection of the various international, regional and bilateral investment agreements in order to analyse their compatibility with human rights.

5. Conclusions and recommendations:

(a) Adoption of recommendations and proposals relating to the possibility of developing a code of conduct for transnational corporations, in order to ensure that their activities are in keeping with the promotion and protection of civil, cultural, economic, political and social rights;

(b) Defining the role of the United Nations, including appropriate implementation mechanisms, in order to ensure the compatibility of the activities of transnational corporations with human rights, including the right to development, the right to a healthy environment and the right to peace;

(c) Recommending the drafting and adoption of mechanisms according to which host and home Governments would be obliged to elaborate internal legal monitoring standards in respect of the activities of transnational corporations;

(d) Analysis of possible liability of States and TNCs failing to fulfil their obligations.

6. Recommendations for future work of the working group on the effects of the activities of transnational corporations on human rights, including the right to development and the right to a healthy environment.

7. Adoption of the report of the working group to the Sub-Commission.

10. The working group had before it a number of documents relating to its agenda. These are listed in the annex.

I. ACTIVITIES OF TRANSNATIONAL CORPORATIONS

11. At the first meeting of the working group, the Chairman-Rapporteur made an introductory statement pointing out that the main task of the working group was to draft a document which would integrate all the measures and norms necessary to ensure that the activities of TNCs were consistent with the promotion and protection of human rights. The three-year mandate of the working group would provide room for debate and a search for consensus.

General comments by members of the Working Group and experts of the Sub-Commission

12. Instead of examining the profits or benefits of TNC activities in respect of different countries, it would be more practical for the working group to identify best practices since its role was not only to identify aspects related to the profit-seeking activities of TNCs but also to those impacting on human rights. In that connection, it was requested that both the positive and negative impacts of the activities of TNCs on the enjoyment of human rights be examined.

13. The following points were emphasized with regard to information-gathering:

(a) A comprehensive collection of background materials would lend credibility to the overall process and provide a good resource for further deliberations;

(b) It would be of greater use if the final report would summarize and analyse the available background information and indicate the human rights context in which TNCs operated. In that connection, special attention should be paid to the impact of TNCs on women and the girl child who might be disproportionately affected by their activities. Educational opportunities in skills and fields most likely to produce highly paid employment in TNCs might be foreclosed to women and the girl child;

(c) There was a need to collect information on the impact of TNCs on indigenous communities, the relationship between the most impoverished communities and the most active transnational business activities, comparisons of minimum standards of living and average wages, the availability of health and other benefits for TNC workers, the mortality rates of TNC workers versus those of the surrounding population, the major corporations which contribute to programmes of the surrounding communities as well as TNCs which had introduced affirmative action or minority contracting programmes.

14. TNCs were carrying out highly important activities for the economies of many countries and for the global economy. However, the impact of their activities might impinge on the fundamental principle of sovereignty.

15. There was a need to address the issue of untimely privatization in the least developed countries. Basic services such as water, electricity and telecommunications might not reach the people in those countries because those services were in the hands of TNCs seeking profits. In that regard, the connection between the privatization process and the expanding role of TNCs should be explored.

16. The issue of intellectual property rights had significant implications for the realization of economic, social and cultural rights. The vast majority of patents were concentrated in the developed world.

17. The 1995 and 1996 reports of the Secretary-General on the human rights aspects of the activities of transnational corporations were important sources in respect of a systematized information-gathering process. Additionally, relevant information from other competent United Nations bodies such as UNCTAD, ILO, the World Trade Organization and the World Bank would be useful.

General comments by NGOs

18. The working group should approach the issue in a broad context, examining the interrelationship of subcontractors, the economy, the community at large and TNCs. Attention should also be paid to military TNCs that affected indigenous populations by producing weapons of mass destruction which led to gross violations of human rights in the world.

19. Reference was made to several United Nations initiatives, particularly the Global Compact launched by the Secretary-General at the Davos World Economic Forum in 1999 and the UNDP Global Sustainable Development Facility (GSDF).

20. It was important to receive information, particularly from specialized bodies such as ILO, UNRISD, WHO and FAO. Information should also be solicited from individual experts. Information from NGOs was equally crucial. It was recommended that relevant publications be collected. Mentioned was the working paper by the American Association of Jurists, entitled "The impact of the practices and activities of transnational corporations on the enjoyment of human rights", which examined the impact of the activities of TNCs on such human rights as labour rights and the right to information.

21. Since the violations of civil and political rights were to a large extent the results of violations of economic, social and cultural rights, the working group might wish to look into the root causes of the violations of economic, social, cultural and environmental rights resulting from the activities of TNCs. In that respect, the report contained in document E/CN.4/Sub.2/1998/NGO/12 was considered to be important.

22. The United Nations Non-Governmental Liaison Service suggested close cooperation with OHCHR in gathering relevant information on the subject. It offered to provide contacts with NGOs specialized in this area.

23. The activities of TNCs were changing continuously. Giant TNCs, for example, engaged in genetic engineering and technology. It was also important for the working group to examine the impact of the activities of TNCs on labour rights, health, the right to information, the exercise of political rights, and decision-making at the national and international levels.

24. There was a need to address the intellectual property regime in respect of TNCs. Research into the illegal transfer of capital from poor to rich countries as well as the speculative operations of stock markets and mergers which led to a concentration of monopolies should be carried out. The impact of the activities of TNCs on the rights of indigenous peoples should also be addressed.

II. PRESENT STANDARDS AND STANDARD-SETTING ACTIVITIES

General comments by members of the working group and experts of the Sub-Commission

25. A number of standard-setting activities had taken place: (a) United Nations-based activities; (b) business organizations' efforts to establish human rights guidelines as a result of a dialogue among business entities and sometimes as a result of NGO or shareholder-based pressures; and (c) NGO-based initiatives. TNCs were encouraged to adopt policies that would ensure not only the human rights of workers, but also the rights of persons within the larger communities in which they operated. The working group should explore ways to bring the various constituencies together, in order to develop a widely accepted and effective set of standards which would address the human rights responsibilities of TNCs and of the States in which they operated. The working group also needed to look for examples of standard-setting activities, in particular in areas not previously explored by the United Nations system, such as sustainability reporting guidelines for companies to report on progress achieved in areas such as the environment and other social and economic fields. Accordingly, it was important for the working group to solicit inputs from and offer inputs directed towards the elaboration of sustainability reporting guidelines.

26. With reference to the elaboration of a code of conduct for TNCs, the working group stressed the fact that the new code of conduct should have a binding character and require TNCs to prepare "human rights impact assessments" on a regular basis.

27. It was important to note that the effective implementation of a code of conduct could only be guaranteed with the full involvement of trade unions. The major concern in formulating such a code of conduct consisted of establishing an independent monitoring mechanism to ensure its implementation. A code of conduct should not be a substitute for collective bargaining.

Comments by NGOs

28. With regard to the collection of information on a Multilateral Agreement on Investment (MAI), it was important to examine the roles that TNCs played in formulating investment agreements.

III. CONCLUSIONS AND RECOMMENDATIONS

29. It was important to consider both the activities of TNCs and those of Governments to ensure that they interacted in a positive way to achieve the purpose of further promoting and protecting human rights.

30. In its final report, the working group would endeavour to identify a framework or definition of TNCs and the national and international legal standards which applied to them.

31. The principles of individual and collective responsibility of TNCs should be further elaborated. In many instances, human rights violations by TNCs were neither compensated nor punished because no laws existed.

32. The working group intends to consider developing a code of conduct for TNCs based on the human rights standards. Such a code would attempt to involve in a constructive manner the relevant business community and NGOs. Mr. Weissbrodt volunteered to prepare such a code of conduct in cooperation with NGOs having expertise on the subject.

33. Mr. Eide volunteered to prepare a paper compiling and analysing relevant human rights standards.

34. The Chairman-Rapporteur proposed to prepare a paper on the identification and examination of the effects of the activities of transnational corporations on the enjoyment of human rights as well as on a draft mechanism for the implementation of the code of conduct to be prepared by Mr. Weissbrodt.

35. NGOs and other interested parties were invited to submit relevant background materials to the working group at its next session, especially those relating to item 3 of the agenda.

36. The working group should address the issue of cultural rights and TNCs' activities in the context of globalization. As globalization swept across the world, individual cultures were being eroded. It was therefore important for the working group to discuss and understand the long-lasting implications of the activities of TNCs in the context of cultural rights.

IV. RECOMMENDATIONS FOR FUTURE WORK OF THE WORKING GROUP

37. As regards its future proceedings, the working group intends to invite all concerned constituencies to participate in its work, including the business community, NGOs and United Nations agencies having a mandate relating to this subject.

V. ADOPTION OF THE REPORT OF THE WORKING GROUP TO THE SUB-COMMISSION

38. At its final meeting, the working group adopted the present report to the Sub-Commission on the Promotion and Protection of Human Rights.

Annex

LIST OF DOCUMENTS BEFORE THE WORKING GROUP

1 Effects of structural adjustment policies on the full enjoyment of human rights: report by the independent expert, Mr. Fantu Cheru, submitted in accordance with Commission on Human Rights decisions 1999/102 and 1997/101 (E/CN.4/1999/50)

2 Working document on the impact of the activities of transnational corporations on the realization of economic, social and cultural rights, prepared by Mr. El Hadji Guisse, pursuant to Sub-Commission resolution 1997/11 (E/CN.4/Sub.2/1998/6)

3 The impact of the activities and working methods of transnational corporations on the full enjoyment of all human rights, in particular economic, social and cultural rights and the right to development, bearing in mind existing international guidelines, rules and standards relating to the subject-matter: report of the Secretary-General (E/CN.4/Sub.2/1996/12)

4 Giving a human face to the global market: the business case for human rights, statement by the United Nations High Commissioner for Human Rights to the WinConference '99, Interlaken, Switzerland, 10 June 1999

5 Global and regional foreign-direct-investment (FDI) trends, presentation by Karl P Sauvant, United Nations Conference on Trade and Development, at the Third Seminar on Investment, Trade and Economic Development, Evian, France, 21-22 April 1999

6 Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of the International Labour Office at its 204th session, Geneva, November 1977, document OB vol. LXI, 1978, Series A, No. 1

7 A Compact for the New Century, statement by the United Nations Secretary-General to the World Economic Forum, Davos, Switzerland, 31 January 1999, United Nations press release SG/SM/99/25

8 A Perilous Partnership: The United Nations Development Programme's Flirtation with Corporate Collaboration. The Transnational Resource and Action Center (TRAC) in collaboration with the Institute for Policy Studies and the Council on International and Public Affairs, March 1999

9 Making Investment Work for People: an International Framework for Regulating Corporations. Consultation paper, People Before Profits Campaign, World Development Movement, London, February 1999

10 Accord des citoyens et des peuples sur l'investissement et les richesses "ACPIR". Coordination française contre les clones de l'Accord multilatéral sur l'investissement (AMI), Observatoire de la mondialisation, sixième version, Paris, juin 1999

11 The OECD Declaration and decisions on international investment and multinational enterprises - basic texts, OECD/GD(97)36, Paris, 1997

12 Business Responsibility for Environmental Protection in Developing Countries Report of the International Workshop, Heredia, Costa Rica, 22-24 September 1997 United Nations Research Institute for Social Development and Universidad Nacional, Programa CAMBIOS, Geneva, May 1998

13 Eric Kolodner, Transnational Corporations Impediments or Catalysts of Social Development?, United Nations Research Institute for Social Development (UNRISD/OP/94/5), Geneva, November 1994

14 United Nations Development Programme, Human Development Report 1997

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